



MWWDPROG



2010001042

STATE REVOLVING FUND LOCAL MATCH LOAN PROGRAM CONTRACT  
BETWEEN THE  
STATE WATER RESOURCES CONTROL BOARD  
AND  
CITY OF SAN DIEGO

CONTRACT NO. 7-832-550-0  
LOCAL MATCH LOAN NO. C-06-4542-110

This Local Match loan contract is made this 25th day of September, 1997, between the State of California, acting by and through the State Water Resources Control Board, hereafter referred to as the "SWRCB", and City of San Diego, a municipality of the State of California, hereafter referred to as the "Agency".

WHEREAS:

1. The federal Clean Water Act (33 U.S.C.A. §1251 et seq.) and state law (Division 7, Chapter 6.5, California Water Code) authorize the SWRCB to enter into contracts with municipalities and other public agencies for financial assistance for construction of publicly owned treatment works; and
2. The Agency has made application for a Local Match loan related to construction of the Project hereafter described, and said Project has been determined by the SWRCB to be eligible for a Local Match loan pursuant to applicable federal and state laws, rules, regulations and guidance; and
3. The SWRCB has authorized Local Match loan funding for the Project hereafter described. (See SWRCB Resolution No. 97-104, approved on November 18, 1997).

NOW, THEREFORE, It is Agreed as Follows:

SECTION 1. PROJECT DESCRIPTION.

The Project, commonly known as Point Loma Central Boiler Facility and Pipe Gallery Upgrade, generally consists of construction at the City of San Diego Point Loma Wastewater Treatment Plant of a centrally located boiler facility with four 250 horsepower boilers. The construction will include the upgrade and expansion of the existing pumping, piping, and control systems, as more particularly described in the Local Match loan application of the Agency and the approved plans and specifications for the Project.

SECTION 2. INCORPORATION OF DOCUMENTS: ORDER OF PRECEDENCE:  
GENERAL AGENCY COMMITMENTS.

This contract incorporates herein, or by reference, the documents listed below. In the event of any inconsistency in the contract documents, except as otherwise specifically provided, the inconsistency shall be resolved by giving precedence in the following order:

- (1) The provisions of this Local Match loan contract document; (2) the Local Match loan Contract Special Conditions (Exhibit A); (3) the Approval to Award letter (Exhibit B); (4) the Approved Plans and Specifications and Applicable Effluent Limitations (Exhibit C); (5) the Plans and Specifications Approval letters (Exhibit D); (6) the Facilities Plan Approval letter (Exhibit E); (7) the Preliminary Local Match loan Repayment Schedule and any amendments thereto (Exhibit F); and (8) the Local Match loan Contract Standard Conditions (Exhibit G).

The Agency accepts and agrees to comply with all terms, provisions, conditions, and commitments of this contract, including all incorporated documents, and to fulfill all assurances, declarations, representations, and

commitments made by the Agency in its application, accompanying documents, and communications filed in support of its request for Local Match loan.

### SECTION 3. STATE MATCH ACCOUNT.

The Agency will establish a local state match account. The Agency will deposit sufficient funds in the account to make payments to the contractor(s) in an amount equal to the percentage of federal contributions required by the federal Clean Water Act to be matched with state funds (currently 16.667%) and will include the required state match amount in all payments made to the contractor(s).

### SECTION 4. ESTIMATED COST OF PROJECT.

The estimated reasonable cost of the Project at the time of SWRCB Approval, including associated planning and design costs, is eight million twenty one thousand dollars (\$8,021,000) to the Agency.

### SECTION 5. MAXIMUM LOCAL MATCH LOAN AMOUNT.

Subject to all of the terms, provisions, and condition of this contract, and subject to the availability of federal funds, the SWRCB will make a Local Match loan from the State Revolving Fund loan, created by Water Code Section 13477, in an amount not to exceed the maximum sum of eight million twenty one thousand three hundred twenty-nine dollars (\$8,021,329) to the Agency. This amount is based on the Approval to Award (ATA) letter from the SWRCB dated December 3, 1997 (Exhibit B), and includes six million six hundred eighty four thousand four hundred fourteen dollars (\$6,684,414) from the Federal Revolving Fund Loan Account and one million three hundred thirty six thousand nine hundred fifteen dollars (\$1,336,915) from the Agency local state match account described in Section 3.

Although the actual loan amount is higher than the SWRCB Approved amount, it is within the approved amount in the ATA letter and consistent with SRF Policy, Section XV.D, allowing the loan to be issued for up to one hundred fifty percent (150%) of the SWRCB Approved amount.

### SECTION 6. INTEREST RATE.

The Local Match loan interest rate shall be set at zero percent per annum.

### SECTION 7. COMPLETION OF PROJECT.

The Agency agrees to expeditiously proceed with and complete construction of the Project in substantial accordance with Project plans and specifications approved by the SWRCB.

### SECTION 8. PROJECT CERTIFICATION.

One year after Project completion, the Agency shall certify to the SWRCB whether or not the Project, as of that date, meets applicable design specifications and effluent limitations. If the Agency cannot certify that the Project meets such specifications and limitations at that time, the Agency will, at its own expense and in a timely manner, expeditiously make all needed corrections and perform all additional work necessary to allow affirmative certification for the Project.

Failure to submit an affirmative certification within 15 months, or a negative certification with a corrective action report that meets the above requirements and is satisfactory to the Division within 15 months, of the

project completion date will result in an interest penalty of 0.1 percent per day being assessed on the outstanding Local Match loan balance due. The interest penalty will begin on the first day after expiration of the appropriate deadline.

#### SECTION 9. DISBURSEMENT.

Local Match loan funds will be disbursed in accordance with the disbursement provisions of Exhibit G attached hereto.

#### SECTION 10. REPAYMENT OF LOCAL MATCH LOAN.

Local Match loan funds, including the state match described in Section 3, shall be repaid in accordance with the provisions of Exhibit G, attached hereto, and as indicated in appropriate Local Match loan Repayment Schedules in Exhibit F, also attached hereto.

#### SECTION 11. DEDICATED SOURCE OF REVENUE.

The Agency shall adopt an ordinance or resolution designating a source of revenue for repayment of this Local Match loan. The dedicated source of revenue shall comply with the requirements of the federal Clean Water Act and any applicable federal and state laws, rules and regulations and shall have received SWRCB approval.

The Agency shall at all times maintain sufficient revenue to provide reasonable assurance of repayment of this Local Match loan.

#### SECTION 12. SUBORDINATION AND FUTURE LOCAL DEBT.

- A. The obligation of the Agency to make all payments required by this contract to the SWRCB solely from Net System Revenues is subordinate in right of payment to Parity Obligations existing on the date of execution of this contract and additional Parity Obligations incurred pursuant to Section 11 (B) below.
- B. The Agency may incur additional Parity Obligations (the payments of which are senior or prior in right to the payment by the Agency of its obligations required by this contract (and all other contracts between the Agency and the SWRCB that, by their terms, expressly provide therefore)) provided that:
  - 1. All Parity Obligations (including the Parity Obligations proposed to be incurred) shall have an "A" rating (without regard to any refinement or gradation of such rating category by a numerical modifier or otherwise) or better by at least two nationally recognized rating agencies.
  - 2. The Agency fixes, prescribes and collects rates and charges for the Wastewater Service which will be sufficient to ensure that Net System Revenues to pay the obligations required by this contract are at least 1.1 times the current year's debt service on the obligations required by this contract.
- C. For purposes of this Section and Article 15, Paragraph (D) of Exhibit G the capitalized terms "Net System Revenues" and "Parity Obligations" and "Wastewater Service" shall have the meanings given to such terms in the certain Master Installment Purchase Agreement, dated as of September 1, 1993,

between the Agency and the Public Facilities Financing Authority of the City of San Diego, as originally executed and as it may from time to time be amended or supplemented in accordance with the provisions thereof.

#### SECTION 13. FINANCIAL MANAGEMENT SYSTEM AND STANDARDS.

The Agency agrees to comply with federal standards for financial management systems. The Agency agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit preparation of reports required by the federal government and tracing of Local Match loan funds to a level of expenditure adequate to establish that such funds have not been used in violation of federal or state law or the terms of this contract. To the extent applicable, the Agency agrees to be bound by and to comply with the provisions and requirements of the federal Single Audit Act of 1984 (Pub. L. 98-502) and Office of Management and Budget (OMB) Circular No. A-128.

#### SECTION 14. ACCOUNTING STANDARDS.

The Agency will maintain separate Project accounts in accordance with generally accepted government accounting standards including those contained in the "Standards for Audit of Governmental Organizations, Programs, Activities and Functions" promulgated by the U.S. General Accounting Office.

#### SECTION 15. PROHIBITED CONTRACT.

The Agency agrees that it will preclude its contractors and subcontractors from contracting with any party which is debarred, suspended, or otherwise excluded from or ineligible for, participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension".

#### SECTION 16. COPYRIGHTS.

The Agency agrees that the U.S. Environmental Protection Agency shall have a royalty-free, nonexclusive and irrevocable license to reproduce, publish, otherwise use, and to authorize others to use, for federal government purposes: (a) the copyright in any work developed under this Local Match loan contract and (b) any rights of copyright which the Agency may purchase where costs of such purchase are reimbursed with Local Match loan funds.

#### SECTION 17. USER CHARGE SYSTEM.

The Agency shall adopt and maintain in effect a user charge system which at all times complies with the requirements of Section 204(b)(1) of the federal Clean Water Act and applicable federal and state rules, regulations and guidelines.

#### SECTION 18. OPERATION AND MAINTENANCE.

The Agency agrees to properly staff, operate and maintain all portions of the Project during its useful life in accordance with all applicable federal and state laws, rules and regulations.

SECTION 19. USEFUL LIFE OF PROJECT.

For purposes of this contract, the parties agree that the useful life of the Project is 20 years from and after Project completion.

SECTION 20. ASSIGNABILITY.

To the extent permitted by federal and state laws, rules, and regulations, the SWRCB may, assign, grant a security interest in, or otherwise encumber this contract and any right, or rights hereunder, including any payment or payments to be received hereunder.

SECTION 21. STATE REVIEWS AND INDEMNIFICATION.

The parties agree that review or approval of Project plans and specifications by the SWRCB is for administrative purposes only and does not relieve the Agency of its responsibility to properly plan, design, construct, operate, and maintain the Project. As between the SWRCB and the Agency, the Agency agrees that it has sole responsibility for proper planning, design, construction, operation, and maintenance of the Project, and the Agency agrees to indemnify the SWRCB, the State of California and their officers, agents, and employees against and to hold the same free and harmless from any and all claims, demands, damages, losses, costs, expenses, or liability due or incident to planning, design, construction, operation, or maintenance of the Project.

SECTION 22. TERM.

This contract shall take effect upon Department of General Services' approval of the contract, and the contract shall remain in effect for the useful life of the Project or until the date of final Local Match loan repayment, whichever period is longer, unless sooner terminated pursuant to the provisions hereof.

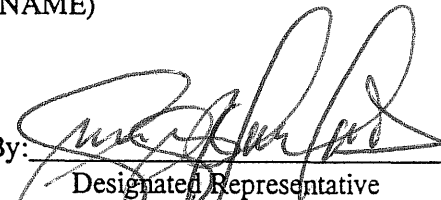
IN WITNESS THEREOF, the parties have executed this contract on the dates set forth below.

CITY OF SAN DIEGO  
(AGENCY NAME)

By:   
Authorized Representative

Michael T. Uberuaga  
Typed Name

City Manager  
Title

By:   
Designated Representative

George I. Loveland  
Typed Name

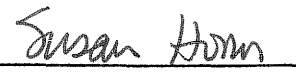
Deputy City Manager  
Title

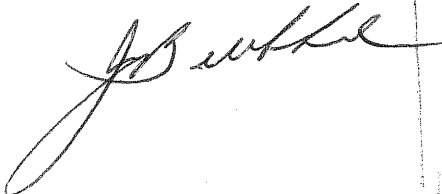
Dated: 11/28/99

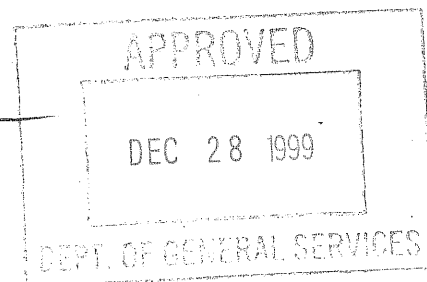
STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

STATE OF CALIFORNIA  
DEPARTMENT OF GENERAL SERVICES

*CGR*

By:  for Chief  
Division of Administrative Services





Dated: 12/20/99

(STAMP)

EXHIBIT A

LOCAL MATCH LOAN CONTRACT SPECIAL CONDITIONS

☒ None at this time.

EXHIBIT B

APPROVAL TO AWARD LETTER

See Approval to Award letter dated December 3, 1997. This letter shows how the maximum Local Match loan amount, as described in Section 4, was determined.





EPA


State Water  
Resources  
Control Board

Division of  
Clean Water  
Programs

Mailing Address:  
P.O. Box 944212  
Sacramento, CA  
94244-2120

2014 T Street,  
Suite 130  
Sacramento, CA  
95814  
(916) 227-4355  
FAX (916) 227-4349

CERTIFIED MAIL NO. Z 080 553 875  
Return Receipt Requested

Little  
DEC 3 1997  
  
Pete Wilson  
Governor

Mr. F.D. Schlesinger, Director  
Metropolitan Wastewater Department  
City of San Diego  
600 B Street, Suite 600  
San Diego, CA 92101

Dear Mr. Schlesinger:

APPROVAL TO AWARD (ATA) – CITY OF SAN DIEGO, POINT LOMA CENTRAL BOILER  
FACILITY AND GALLERY UPGRADES, STATE REVOLVING FUND (SRF) LOAN PROGRAM  
NO. C-06-4245-110.

We have reviewed the ATA request package submitted with the SRF ATA Form 555-1 executed  
by you on October 27, 1997. The California State Water Resources Control Board hereby  
approves the ATA request as follows:

CONTRACTOR	AMOUNT BID	APPROVED
Nielsen Dillingham Builders, Inc.	\$7,231,000	\$6,779,000

The Division of Clean Water Programs (Division) established the SRF ATA budget as follows:

	REQUESTED	APPROVED
A. Construction	\$6,500,165	\$6,779,000
B. Allowances	\$1,198,509	
1. Planning		\$ 183,290
2. Design		\$ 348,189
3. Construction		\$ 605,283
4. Administration		\$ 61,011
5. Prime Engineering		\$ 19,556
6. Value Engineering		\$ 25,000
TOTAL	\$7,698,674	\$8,021,329

Please refer to the enclosed construction eligibility calculations.

The eligibility decisions contained herein are considered staff decisions. If you are IN  
AGREEMENT with these decisions, please state in writing within thirty (30) days from the date of  
this letter to:

Jim Putman, Chief  
Division of Clean Water Programs  
Loans and Grants Branch  
P.O. Box 944212  
Sacramento, CA 94244-2120

If you are NOT IN AGREEMENT with these decisions, then you should request a meeting with  
and/or a final staff decision from Mr. Putman. If you have not contacted Mr. Putman within thirty  
(30) days from the date of this letter, we will have no choice but to issue a final staff decision.

## DISBURSEMENT SCHEDULE

1. Within thirty (30) days, please submit to Ms. Ame Mathies at the above address, a preliminary disbursement schedule (see enclosed format) which shows the estimated monthly amounts to be requested during the construction period. The total should equal the approved SRF ATA budget amount. This is needed to establish a preliminary disbursement schedule for your proposed loan contract.
2. You should allow about two weeks following your (a) **agreement** on the SRF ATA budget, and (b) **submittal** of the preliminary disbursement schedule for the Division to complete preparation of the loan contract, provided all the other prerequisites have been completed. The binding loan commitment takes, on the average, three months to process.
3. Please be reminded that the disbursement(s) for costs incurred prior to the binding loan commitment may be subject to the refinance rules in the SRF Policy.

## CONSTRUCTION CONTRACT REQUIREMENTS

1. The enclosed "Notification of Labor Unions or Other Organizations of Workers" must be reproduced in the quantity desired, completed by the contractor, and distributed to all unions and organizations that might represent workers on the job.
2. Mail the following documents to the Construction Administration Unit as soon as they become available:
  - A. One copy of the executed construction contract .
  - B. One copy of the form (see enclosed format) entitled "Certification of Bond and Insurance Coverage", and
  - C. One copy of the Notice to Proceed.
3. Recipients of SRF loan assistance are required to report MBE/WBE utilization to the Division. Form MBE/WBE UR334, and the associated instructions are enclosed. If you have any questions, please contact Mr. Bruce Seno at (916) 227-4488.

Sincerely,

151

Richard Wasser, Chief  
Construction Administration Unit

bcc: Jim Putman, DCWP  
Bruce Seno, DCWP  
Daniel Little, PM, DCWP  
Ame Mathies, DCWP  
Fred Johansen, Payments, DCWP

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Enclosures

## EXHIBIT C

### APPLICABLE EFFLUENT LIMITATIONS

Incorporated by reference are the following supporting documents:

SEE WASTE DISCHARGE REQUIREMENTS, ORDER NO. 95-106, AND NPDES PERMIT NO. CA 0107409, ADOPTED BY THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO REGION, AND THE ENVIRONMENTAL PROTECTION AGENCY, REGION 9, ON NOVEMBER 9, 1995.

### APPROVED PLANS AND SPECIFICATIONS

Incorporated by reference are the Plans and Specifications approved by the Division on September 25, 1997, which are the basis for the construction contract to be awarded by the City of San Diego to the Nielsen Dillingham Builders, Inc. following competitive advertising.

EXHIBIT D

PLANS AND SPECIFICATIONS APPROVAL LETTER

See the Plans and Specifications approval letter dated September 25, 1997, for the Point Loma Central Boiler Facility and Pipe Gallery Upgrade Project.



C. EPA

State Water  
Resources  
Control Board

Division of  
Clean Water  
Programs

Mailing Address:  
P.O. Box 944212  
Sacramento, CA  
94244-2120

2014 T Street,  
Suite 130  
Sacramento, CA  
95814  
(916) 227-4400  
FAX (916) 227-4349

SEP 25 1997

Mr. F. D. Schlesinger, Director  
Metropolitan Wastewater Department  
600 B Street, Suite 500  
San Diego, CA 92101-4587



Pete Wilson  
Governor

Dear Mr. Schlesinger:

FINAL PLANS AND SPECIFICATIONS APPROVAL; CITY OF SAN DIEGO (CITY)  
POINT LOMA WASTEWATER TREATMENT PLANT - CENTRAL BOILER FACILITY  
AND GALLERY UPGRADES; STATE REVOLVING FUND (SRF) LOAN  
NO. C-06-4542-110

The Division of Clean Water Programs (Division) has received the signed Plans and Specifications (P&S) Approval forms and Project Performance Standards for the Point Loma Wastewater Treatment Plant Central Boiler Facility and Gallery Upgrades project by FAX September 24, 1997.

Pursuant to the City's concurrence with the eligibility determinations identified on the P&S Approval forms, and with the requirements contained in the Project Performance Certification Standards, the Division hereby approves the P&S.

The City's project is tentatively scheduled for the State Water Resources Control Board's (SWRCB) Workshop agenda for November 5 - 6, 1997. At that time, the SWRCB will consider the project for an SRF loan funding commitment. If the SWRCB approves the project, a Resolution will be adopted committing funds at the November 18, 1997, SWRCB Meeting. After adoption, the Division can then begin the process of final execution of an SRF loan for the City's project.

The P&S are conditionally approved provided the City satisfactorily complies with any and all conditions noted on the enclosed approval form and in the SRF contract documents.

The Final P&S Approval assumes that the City has obtained the necessary approval(s), permit(s), or exemption(s) from other regulatory agencies, and has implemented any mitigation measures necessary where construction activities might affect public health or water quality. This approval does not supersede any Regional Water Quality Control Board or local health department orders or requirements.

Enclosed is an Approval to Award (ATA) request form. Submit this form as soon as possible to the Division's Contracts Administration (CA) Unit. Please contact Mr. Bruce Seno of the CA Unit at (916) 227-4488 for assistance or specific questions regarding processing the ATA for this project.

Inve  
55.97

11/11/97

to improve and enhance the quality of California's water resources and

SEP 25 1997

Mr. F.D. Schlesinger

2

Please do not hesitate to call Mr. Dan Little at (916) 227-4575, should you have any questions regarding this letter.

Sincerely,

ORIGINAL SIGNED BY

*Howard Whitver*

Farouk T. Ismail, PhD., P.E.

Chief, Planning & Design Section

Enclosure

cc: Mr. Jim Wageman, Senior Engineer  
Mr. Richard J. Enriquez, Grants Administrator  
Metropolitan Wastewater Department

bcc: Howard Whitver, DCWP  
Dan Little, DCWP  
Nick Kontos, DCWP

dlittle/boilers.psa/25 sept97/ ANNE

**CLEAN WATER PROGRAMS  
PLANS AND SPECIFICATIONS APPROVAL FORM**

Project No.	<u>C-06-4542-110</u>	Date:	<u>September 19, 1997</u>
Applicant	<u>City of San Diego</u>		
Address	<u>600 B Street, Suite 500, San Diego, CA 92101-4587</u>		
Auth. Rep.	<u>F. D. Schlesinger</u>	Engineer	<u>Same as above</u>
Address	<u>(same as above)</u>	Address	<u>Same as above</u>
Phone	<u>(619) 533-4200</u>	Phone	<u>Same as above</u>
Project Description	<u>Pt. Loma WWTP - Central Boiler Facility &amp; Gallery Upgrades</u>		

List the eligible items (identify by bid item and schedule):

**I. ELIGIBILITY DETERMINATION AGREEMENT**

The eligibility determination identified below is based on the review of the contract documents received by the Division July 11, 1997, the Facility Plan Approval letter dated September 11, 1997, and supplemental information dated May 13, 1997, and September 3, 1997.

Bid Item No. 1	Lump Sum Bid for General Construction; this item is 100 percent eligible.
Bid Item No. 2	Lump Sum Bid for Sheeting, Shoring, and Bracing; this item is 100 percent eligible.
Bid Item Nos. 3 - 5	These items are not eligible - see Condition 1 below.
Bid Item No. 6	This item is 100 percent eligible.
Bid Items Nos. 7 and 8	These items are not eligible - see Condition 2 below.
Bid Item No. 9	This item is 100 percent eligible.
Bid Items Nos. 10 - 14	These items are not eligible - see Condition 2 below.

**II. CONDITIONS OF APPROVAL**

The Plans and Specifications for your project are approved with the following conditions:

Condition on Bid Items 3 - 5

These items appear to be pre-priced change orders and as such are not eligible for SRF loans. Additionally, pursuant to phone discussions on September 18 and 19, 1997, with Division of Clean Water Programs (Division) staff, the City's project engineer requested that these items not be included

**APPROVAL BY STATE**

11/25/97

Signature

*Daniel J. Little*

Print Name and Title

Daniel J. Little, P.E., Associate Engineer

PLANS AND SPECIFICATIONS APPROVAL FORM  
(CONTINUATION SHEET)

Project No. C-06-4542-110

Contract City of San Diego

as eligible because they are unknown quantities and costs may not necessarily be incurred for them. The City is aware that change orders are not eligible.

2. Condition on Bid Items 7, 8, 10, 11, 12, 13, and 14:

These items are ineligible as they are considered "pre-priced" change orders.

The Plans and Specifications Approval does not become final until the loan applicant's authorized representative has signed and returned this form indicating agreement with the eligibility decisions and conditions contained herein, along with a signed copy of the attached Project Performance Certification Standards.

  
Authorized Representative

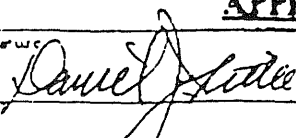
F. D. Schlesinger

7/25/17  
Date

APPROVAL BY STATE

7/25/17

Signature



Name and Title

Daniel J. Little, P.E., Associate Engineer



CLEAN WATER PROGRAMS  
PROJECT PERFORMANCE CERTIFICATION STANDARDS

I, F. D. Schlesinger, as the authorized representative for the City of San Diego hereby agree to the following project performance standards for the Point Loma Wastewater Treatment Plant Central Boiler Facility and Gallery Upgrades, State Revolving Fund (SRF) Loan Number C-06-4542-110:

1. All components of the project shall meet the material, workmanship, and performance standards identified in the contract plans and specifications and will be operational at the time of project performance certification.
2. Each mechanical component and process unit shall be tested to determine that the performance objectives stated in the specifications and design criteria can be met under full load conditions.

The City shall include this information in the project performance certification report due one year after initiation of operation (See Item 6 below). The report shall include a description of the test conditions and the attained performance of each major item of equipment and process unit.

3. This boiler system shall be capable of providing the heat requirements for 3.36 million cubic feet of digester volume to achieve at least 50 percent volatile solids destruction for 1.2 MGD of total sludge flow and a minimum internal digester temperature of 98 degrees F.
4. The existing operation and maintenance tracking system must be updated to include all new mechanical and electrical equipment, spare parts, and a record of preventive and corrective maintenance tasks scheduled and performed.
5. A log of the operation and maintenance of each mechanical component shall be maintained.
6. The following information should be collected for the duration of the one year project performance certification period:
  - a. Calibration records of major mechanical systems; and
  - b. Results of equipment performance tests for pumps, heat exchangers, and boilers.
7. At the end of the one year project performance period, the prime engineer shall prepare a project performance certification report analyzing the ability of the funded facilities to meet above criteria. This report shall be submitted to the Division with, if necessary, a plan of action for correction of any failure to meet the project performance standards listed above.
8. If any correction is necessary, the City will correct performance problems identified by the prime engineer's report at other than State expense.

Project No. SR Loan No C-06-4542-110

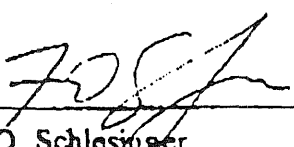
Applicant City of San Diego

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**CLEAN WATER PROGRAMS**  
**PROJECT PERFORMANCE CERTIFICATION STANDARDS**

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I agree with the project performance standards established above.

  
\_\_\_\_\_  
Mr. F. D. Schlosinger  
Authorized Representative

  
\_\_\_\_\_  
Date

---

Project No. SRF Loan No. C-06-4542-110

Applicant City of San Diego

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EXHIBIT E

FACILITIES PLAN APPROVAL LETTER

See the Facilities Plan Approval letter dated September 11, 1997.

6-9 10-11  
9/6  
227-4595  
1,087.155 W.R. DOC  
replied



**Cal/EPA**

**CERTIFIED MAIL NO. P 215 812 979**  
**Return Receipt Requested**



Pete Wilson  
Governor

State Water  
Resources  
Control Board

Mr. F.D. Schlesinger  
Director  
Metropolitan Wastewater Department  
600 B Street, Suite 500  
San Diego, CA 92101-4587

Division of  
Clean Water  
Programs

Dear Mr. Schlesinger:

Mailing Address:  
P.O. Box 944212  
Sacramento, CA  
94244-2120

FACILITIES PLAN APPROVAL, CITY OF SAN DIEGO, POINT LOMA CENTRAL BOILER  
AND PIPING GALLERY UPGRADE, STATE REVOLVING FUND (SRF) LOAN NO.  
C-06-4542-110 ON THE PROPOSED FEDERAL FISCAL YEAR 1998 PROJECT PRIORITY  
LIST SCHEDULED FOR ADOPTION SEPTEMBER 18, 1997

2014 T Street,  
Suite 130  
Sacramento, CA  
95814  
(916) 227-4355  
FAX (916) 227-4349

In accordance with the State Water Resources Control Board's February 1995, Policy for Implementing the State Revolving Fund (SRF) for Construction of Wastewater Treatment Facilities (Policy), as amended on January 18, 1996, the Division of Clean Water Programs (Division) herewith approves the facilities plan for the subject project. Our approval is based on the following determinations:

1. A complete project report documentation including the "Point Loma Wastewater Treatment Plant Master Plan" dated August 1994, the Final Value Engineering Report dated June 1994, and correspondences dated May 13, 1997, and September 3, 1997, has been submitted and it complies with Section VIII. A. of the Policy;
2. The environmental documentation meets all of the environmental review requirements and the Division's Environmental Services Unit approved the documents on July 2, 1997;
3. A draft revenue program was approved by the Division on May 14, 1997, and
4. The City is a signatory to the State Water Coalition's Memorandum of Understanding Regarding Urban Water Conservation in California.

#### PROJECT DESCRIPTION

Proposed project is described in Chapter 4, Sections 4.1 - 4.5 of the "Point Loma Wastewater Treatment Plant Master Plan" dated August 1994, and supplemental information dated September 3, 1997. The project is entitled in the contract documents and drawings as the "Pt. Loma WWTP - Central Boiler Facility & Gallery Upgrades".

The Division has made the determination that the items listed below will be eligible for a SRF loan. Where applicable, eligible capacity will be adjusted at the time of approval to award the construction contract to account for any changes in the estimated date for initiation of construction.

10/10/97

little 9/10/97

Winters 9-10-97

Reyes to mail 9/11/97

1. The following items will be eligible for a SRF loan:

- A. Construction of necessary centrally located boiler facilities including site development, structural work, equipment and pumping and piping systems, main gallery piping, control facilities, and electrical and instrumentation;
- B. Purchase and installation of four (4) 250 HP boilers to meet digester heating requirements for 12 years forecasted reserve capacity;
- C. Special equipment necessary to maintain the facilities, including one set of the manufacturer's list of spare parts;
- D. Demolition of existing structures necessary to provide space for new structures or equipment;
- E. Necessary insurance related to the construction contract;
- F. Allowances for planning, design, construction, prime engineering, and administration (see Appendix I of the Policy).

2. The following items are not eligible for loans:

- A. Construction contingencies;
- B. Construction change orders and claims;
- C. Facilities under construction, if any, prior to the issuance of Final Plans and Specifications Approval by the Division;
- D. All other items not included in the construction contract except allowances.

3. The eligible design parameters are:

Total Sludge Flow	1.2 MGD
Volatile Solids Destruction	50 percent or greater
Digester Operating Temperature	92 - 98 degrees F
Digester Heat Requirement	30.8 MMBTUH @ 4.5% solids

Heat requirement is based on total active working digester volume of 3.36 million cubic feet (eight digesters) for a four day peak heat demand, a boiler loop supply temperature of 195 - 200 degrees F, and includes heat losses and transfer efficiency.

The construction cost of the project is \$7,954,100 based on the engineers estimate and the Bid Results dated May 13, 1997. The estimated loan eligible construction cost is \$6,500,165.

The total loan eligible project cost including engineering and administration allowances is estimated at \$7,698,674.

### PROJECT MILESTONES

This approval is based on submittals and milestone dates according to the following schedule:

Value engineering report	Completed April 18, 1994
Advertise for bids	Completed February 20, 1997
Open bids	Completed May 13, 1997
Submit final plans and specifications	Completed July 11, 1997
Approve plans and specifications <sup>1</sup>	September 19, 1997
Initiate construction	September 29, 1997
Submit loan application	October 15, 1997
Approval to Award	October 15, 1997
SWRCB Funding Commitment <sup>2</sup>	November 18, 1997
Execute loan contract <sup>3</sup>	January 15, 1998
Submit final revenue plan	January 4, 1999
Complete construction	February 26, 1999
Initiate facilities operation	March 26, 1999
Performance certification	March 27, 2000

<sup>1</sup>Plans and Specifications Approval is not a funding commitment.

<sup>2</sup>Tentative date for funding commitment.

<sup>3</sup>The SRF loan contract process can not be initiated until the State Water Resources Control Board (SWRCB) makes a preliminary loan commitment.

Special attention to the project milestones schedule is critical. Schedules must be compatible with requirements of any Regional Water Quality Control Board enforcement actions related to the planned facilities. Approval of a schedule not compatible with Regional Water Board requirements does not relieve the applicant of its responsibility to achieve compliance with said requirements.

Enclosed is an application for the SRF loan. Please submit the application as soon as possible so that your loan package can be processed in a timely manner.

### CONDITIONS OF APPROVAL

1. This approval includes only that project described above and does not include any associated projects which may have been referred to in the facility planning documentation submitted for this project. This approval does not guarantee that loan assistance will be awarded for this project.

Mr. F.D. Schlesinger

-4-

1. This letter constitutes a Final Staff Decision. We will only request that the SWRCB make a preliminary loan commitment for this project's SRF loan AFTER an agreement in writing on the eligibility decisions, schedule, and other conditions in this letter have been received from you. To expedite this process, please notify me immediately in writing if you agree with this letter as currently written, so I can start the process to procure the SWRCB approval for a SRF loan for your project.

If you are **NOT** in agreement, then you must request a Final Division Decision within sixty (60) days from the date of this letter. Your request should be specific on the items of disagreement, and suggest the exact changes with which you would be in agreement. Please send the request to:

Mr. Harry Schueller, Chief  
Division of Clean Water Programs  
P.O. Box 944212  
Sacramento, CA 94244-2120

Again, we **MUST** reach agreement in writing before your proposed project can be scheduled for SWRCB approval of a preliminary funding commitment.

Please contact Mr. Dan Little at (916) 227-4575 if you have any questions or comments regarding this letter.

Sincerely,

**ORIGINAL SIGNED BY**  
Jim Pullman, Chief  
Loans and Grants Branch

Enclosure(1) Loan application

cc: Mr. Dat Quach, Area Engineer,  
California Regional Water Quality Control Board,  
Region 9

bcc: Farouk Ismail, DCWP  
Sandy Houck, DCWP  
Howard Whitver, DCWP  
Nick Kontos, DCWP  
John Herren, DCWP  
Ame Mathies, DCWP  
Dick Wasser, DCWP  
Wayne Hubbard, DCWP  
Ron Blair, DCWP  
Ilene Smith, DCWP

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State Water Resources Control Board  
Division of Clean Water Programs

## **Financial Assistance Application**

for

State Revolving Fund Loan Program  
Water Reclamation Loan Program  
Small Community Grant Program

This application package should be submitted to the address listed below at the completion of Facilities Planning. An agency may request funding from more than one program. The application, including attachments, is intended to provide all information and documents needed for facilities plan approval and presentation of the project to the State Water Resources Control Board for a preliminary funding commitment. Updated information will be required to be submitted later.

Please refer to the adopted Policies for program specific information

Submit the completed application package to:

State Water Resources Control Board  
Division of Clean Water Programs  
2014 T Street  
P.O. Box 944212  
Sacramento, CA 94244-2120

ATTN: Farouk Ismail, Ph.D., P.E.  
Chief, Planning and Design Section



EXHIBIT F

SRF LOCAL MATCH LOAN REPAYMENT SCHEDULE

See the attached Preliminary Local Match loan Repayment Schedule dated August 6, 1999. The actual Repayment Schedule will be forwarded to the Agency after all disbursements have been issued.

**EXHIBIT "F"**  
**STATE WATER RESOURCES CONTROL BOARD**  
**STATE REVOLVING FUND LOCAL MATCH LOAN PRELIMINARY REPAYMENT SCHEDULE**

Recipient : CITY OF SAN DIEGO - POINT LOMA (Central Boiler Facilities & Gallery Upgrade)  
 Loan No. : C-06-4542-110  
 Contract No.: 7-832-550-0  
 Repayment provision: One year after completion of construction  
 Construction completion date: December 1, 1999 (estimated)  
 Capitalization Grant Funding: FFY - Repayment

DATE: 06-Aug-99

LOAN AMOUNT: \$8,021,329

-Federal Share \$6,684,414 83.333%

-State Share \$1,336,915 16.667%

INTEREST RATE :

-Original 0.0%

Date	Disbursement/ Repayment	No	Total Eligible	Federal Disbursement	Local/State Match	Period Interest	Repayment	Interest	Principal	BALANCE	Comments
01-Oct-99	Disbursement*	1	\$6,101,100	\$5,084,230	\$1,016,870	\$0.00					At least the local/state match amount is to be paid to contractor prior to submitting each loan disbursement request.
01-Nov-99	Disbursement*	2	1,242,329	\$1,035,270	207,059	0.00					
01-Dec-99	Disbursement*	3	677,900	\$564,914	112,986	0.00					
01-Oct-00	Principal Balance Due									\$8,021,329.00	
01-Oct-00	Repayment*	1					\$401,066.45	\$0.00	\$401,066.45	7,620,262.55	Total Local/State Match recipient contribution: \$1,336,915
01-Oct-01	Repayment*	2					\$401,066.45	0.00	401,066.45	7,219,196.10	
01-Oct-02	Repayment*	3					\$401,066.45	0.00	401,066.45	6,818,129.65	
01-Oct-03	Repayment*	4					\$401,066.45	0.00	401,066.45	6,417,063.20	
01-Oct-04	Repayment*	5					\$401,066.45	0.00	401,066.45	6,015,996.75	
01-Oct-05	Repayment*	6					\$401,066.45	0.00	401,066.45	5,614,930.30	
01-Oct-06	Repayment*	7					\$401,066.45	0.00	401,066.45	5,213,863.85	
01-Oct-07	Repayment*	8					\$401,066.45	0.00	401,066.45	4,812,797.40	
01-Oct-08	Repayment*	9					\$401,066.45	0.00	401,066.45	4,411,730.95	
01-Oct-09	Repayment*	10					\$401,066.45	0.00	401,066.45	4,010,664.50	
01-Oct-10	Repayment*	11					\$401,066.45	0.00	401,066.45	3,609,598.05	
01-Oct-11	Repayment*	12					\$401,066.45	0.00	401,066.45	3,208,531.60	
01-Oct-12	Repayment*	13					\$401,066.45	0.00	401,066.45	2,807,465.15	
01-Oct-13	Repayment*	14					\$401,066.45	0.00	401,066.45	2,406,398.70	
01-Oct-14	Repayment*	15					\$401,066.45	0.00	401,066.45	2,005,332.25	
01-Oct-15	Repayment*	16					\$401,066.45	0.00	401,066.45	1,604,265.80	
01-Oct-16	Repayment*	17					\$401,066.45	0.00	401,066.45	1,203,199.35	
01-Oct-17	Repayment*	18					\$401,066.45	0.00	401,066.45	802,132.90	
01-Oct-18	Repayment*	19					\$401,066.45	0.00	401,066.45	401,066.45	
01-Oct-19	Repayment*	20					\$401,066.45	0.00	401,066.45	0.00	
			\$8,021,329	\$6,684,414	\$1,336,915		\$8,021,329.00	\$0.00	\$8,021,329.00		

\* Projected disbursements and repayments are subject to recalculation based on actual disbursements.

EXHIBIT G

LOCAL MATCH LOAN CONTRACT STANDARD CONDITIONS

ARTICLE 1. DEFINITIONS.

- (A) "Allowance" means an amount based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the Project.
- (B) "Authorized Representative" means the Mayor of a City, the Chairperson of the County Board of Supervisors, the Chairperson of the Board of Directors of the Agency, or another duly appointed representative. For all authorized representatives, a certified original copy of the authorizing resolution that designates the authorized representative, by title, must accompany any contract, the first disbursement request, and any other documents or requests required or allowed under this contract.
- (C) "Completion of construction" means the date, as determined by the Division after consultation with the Agency, that the work of building and erection of the Project is substantially complete.
- (D) "Dedicated source of revenue" means "Net System Revenues".
- (E) "Force Account" means the use of the Agency's own employees or equipment for construction of the Project.
- (F) "Division" means the Division of Clean Water Programs of the State Water Resources Control Board, or any other segment of the SWRCB authorized to administer the State Revolving Fund.
- (G) "Initiation of construction" means the date that notice to proceed with work is issued for the Project, or, if notice to proceed is not required, the date of commencement of building and erection of the Project.
- (H) "Official Representatives"
  - (1) The SWRCB Local Match loan Coordinator shall be the Division Chief of the Division of Clean Water Programs.
  - (2) The SWRCB Local Match loan Coordinator shall be the SWRCB's representative for administration of the contract and shall have authority to make determinations and findings with respect to any controversy arising under or in connection with interpretation of the contract.
  - (3) The Agency's Authorized Representative shall be **Michael T. Uberuaga, City Manager**, or his **designee**, who shall administer the contract and who shall have full authority to act on behalf of the Agency, including authority to execute disbursement requests. All communications given to the Agency representative shall be as binding as if given to the Agency.
  - (4) Either party may change its Official Representative upon written notice to the other party.

- (I) "Project completion" means the date, as determined by the Division after consultation with the Agency, that operation of the Project is initiated or is capable of being initiated, whichever comes first.
- (J) "Revenue Program" means a dedicated source of revenue adopted by the Agency which provides for recovery of appropriate capital costs of the Project, generates adequate income to reasonably assure repayment of Local Match loan funds under this contract, generates adequate income to provide for reasonable operation and maintenance of the Project, and provides adequate income for reasonable future expansion and improvement of the Project.

ARTICLE 2. COMPLIANCE WITH LAW, REGULATIONS, ETC.

- (A) The Agency agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, guidelines, regulations, and requirements. Without limitation of the foregoing, the Agency agrees that, to the extent applicable, the Agency will:
  - (1) Comply with, the provisions of the adopted environmental mitigation plan for the term of the Local Match loan contract;
  - (2) Comply with, the SWRCB's "Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities", August 18, 1988 (amended September 20, 1990, January 21, 1993, February, 1995, January 18, 1996 and June 18, 1998); and
  - (3) Comply with, and require its contractors and subcontractors on the Project to comply with federal and state minority and women business enterprise (MBE/WBE) requirements.

ARTICLE 3. AWARD OF CONSTRUCTION CONTRACTS; NOTIFICATION OF AWARD AND INITIATION OF CONSTRUCTION.

- (A) The Agency agrees to award the prime construction contract within 180 days (six months) after issuance of the Local Match loan contract. An extension may be granted by the Division.
- (B) The Agency agrees to promptly notify the Division in writing both of the awards of the prime construction contract for the Project and of initiation of construction of the Project. The Agency shall include with the notice of initiation of construction a statement as to the anticipated date of completion of construction of the Project.

ARTICLE 4. CONSTRUCTION ACTIVITIES; NOTIFICATIONS; PROTECTION OF ARCHEOLOGICAL AND HISTORICAL RESOURCES.

- (A) The Agency agrees to promptly notify the Division in writing of:
  - (1) Any substantial change in scope of the Project. The Agency agrees that no substantial change in the scope of the Project will be undertaken until written notice of the proposed change has been provided to the Division and the Division has given written approval for such change;

- (2) Cessation of all major construction work on the Project where such cessation of work is expected to or does extend for a period of 30 days or more;
- (3) Any circumstance, combination of circumstances, or condition, which is expected to or does delay completion of construction for a period of 90 days or more beyond the estimated date of completion of construction previously provided to the Division;
- (4) Discovery of any potential archeological or historical resource. Should a potential archeological or historical resource be discovered during construction of the Project, the Agency agrees that all work in the area of the find will cease until a qualified archeologist has evaluated the situation and made recommendations regarding preservation of the resource, and the Division has determined what actions should be taken to protect and preserve the resource. The Agency agrees to implement appropriate actions as directed by the Division; and
- (5) Completion of construction of the Project.

ARTICLE 5. PROJECT ACCESS.

- (A) The Agency agrees to ensure that the SWRCB, or any authorized representative thereof, will have suitable access to the Project site at all reasonable times during Project construction and thereafter for the useful life of the Project.

ARTICLE 6. MBE/WBE REPORTING.

- (A) The Agency agrees to report MBE/WBE utilization to the Division on the MBE/WBE Utilization Report, SWRCB Form MBE/WBE UR334. Reports must be submitted to the Division within ten (10) calendar days following the end of each fiscal year quarter until such time as the "Notice of Completion" is issued.

ARTICLE 7. PROJECT COMPLETION; INITIATION OF OPERATIONS.

- (A) Upon completion of construction of the Project, the Agency agrees to expeditiously initiate Project operations. At the time of completion of construction, the Division, after consultation with the Agency, will establish a reasonable estimated Project completion date, and the Agency agrees to make all reasonable efforts to meet the date so established. Such date shall be binding upon the Agency unless modified in writing by the Division upon a showing of good cause by the Agency. Extension of the Project completion date by the Division shall not be unreasonably withheld.

ARTICLE 8. REVENUE PROGRAM.

- (A) The Agency agrees to prepare and provide an acceptable final Revenue Program to the Division at the time of 90 percent disbursement of Local Match loan funds. Further Local Match loan disbursements may be withheld until an acceptable final Revenue Program is submitted. The Agency further agrees to periodically review and modify the Revenue Program as necessary to assure reasonable adequacy of the Revenue Program. The final Revenue Program and all modifications thereof shall be consistent with applicable guidelines and shall be to the reasonable satisfaction of the Division.

- (B) The Division may review the Agency's records to assure compliance with the approved Revenue Program at any time during the useful life of the Project.
- (C) The Agency agrees to establish and maintain a Wastewater Capital Reserve Fund (WCRF) for expansion, major repair, or replacement of the wastewater facilities and to maintain the WCRF for the term of the Local Match loan contract. The WCRF shall be maintained in compliance with the "*Policy For Implementing The State Revolving Fund For Construction Of Wastewater Treatment Facilities*" in effect at the time the Local Match loan contract is signed by the Authorized Representative of the Agency. The Agency agrees to submit a report on WCRF activities and status five (5) years after the date of the final revenue program approval by the Division. Updated WCRF reports will be submitted every five-(5) years thereafter until the Local Match loan has been fully discharged. Thereafter, the WCRF will no longer be subject to the requirements of this contract or the above referenced policy. Certification by legal counsel of unused bonding capability for the wastewater enterprise may be used to offset required cash deposits to the WCRF.

ARTICLE 9. CONTINUOUS USE OF PROJECT; LEASE OR DISPOSAL OF PROJECT.

- (A) The Agency agrees that it will not abandon, substantially discontinue use of, lease, or dispose of the Project or any significant part or portion thereof during the useful life of the Project without prior written approval of the Division. Such approval may be conditioned as determined to be appropriate by the Division, including a condition requiring repayment of all or any portion of all remaining Local Match loan funds covered by this contract and any penalty assessments which may be due.

ARTICLE 10. REPORTS.

- (A) The Agency agrees to expeditiously provide, during construction of the Project and thereafter during the useful life of the Project, such reports, data, and information as may be reasonably required by the Division, including but not limited to material necessary or appropriate for evaluation of the State Revolving Fund Local Match loan Program or to fulfill any reporting requirements of the federal government.

ARTICLE 11. LOCAL MATCH LOAN DISBURSEMENTS; AVAILABILITY OF FUNDS.

- (A) Except as may be otherwise provided in this contract, Local Match loan amounts will be disbursed as follows:
  - (1) Upon execution and return of this Local Match loan contract, the Agency may request immediate disbursement of any planning and design allowance included in the Local Match loan amount through submission of Disbursement Request Form 261, or any amendment thereto, duly completed and executed. The planning and design allowance amount due up to the allowance, will be disbursed promptly upon request after approval of this contract by the State Department of General Services;
  - (2) The Agency agrees to submit certification of incurred allowance costs with the allowance pay requests to the Division. The Division will then authorize the disbursement of the federal share of the eligible payment amount;

- (3) Additional Local Match loan funds will be promptly disbursed to the Agency for disbursement costs incurred by the Agency upon receipt of Disbursement Request Form 261, or any amendment thereto, duly completed and executed. Pursuant to 40 CFR 35.3160(b), Local Match loan funds for refinanced project costs (costs other than allowances incurred prior to the execution of the Local Match loan contract) or purchase of local debt must be disbursed at a rate no greater than equal amounts spread over the minimum number of quarters required by 40 CFR 35.3155(c);

Disbursement shall not be made more frequently than one a month. The Agency agrees that it will not request disbursement for any Project cost until such cost has been incurred and is due and payable to Project contractors, or before payment of the State Match portion of the eligible invoice amount has been paid to the Project contractors prior to submitting the progress payment request to the Division. Certification of payments must be submitted to the Division with each payment request. The Division will then authorize the disbursement of the federal share of the eligible payment amount;

- (4) Notwithstanding any other provision of this contract, no disbursement shall be required at any time or in any manner which is in violation of or in conflict with federal or state laws, rules, or regulations.
- (B) The SWRCB's obligation to disburse any sum to the Agency under any provision of this contract is contingent upon the availability of sufficient funds to permit the disbursements provided for herein. In the event that sufficient funds do not become available for reasons beyond the reasonable control of the SWRCB, such as failure of the federal or state government to appropriate funds necessary for disbursement of Local Match loan amounts, the SWRCB shall not be obligated to make any disbursements to the Agency under this contract. This provision shall be construed as a condition precedent to the obligation of the SWRCB to any disbursements under this contract. Nothing in this contract shall be construed to provide the Agency with a right of priority for disbursement over any other agency. If any disbursements, which are otherwise due to the Agency under this contract, are deferred because of unavailability of sufficient funds, such disbursements will promptly be made to the Agency when sufficient funds do become available.

#### ARTICLE 12. WITHHOLDING OF LOCAL MATCH LOAN DISBURSEMENTS.

- (A) The Division may withhold all or any portion of the Local Match loan funds provided for by this contract in the event that:
- (1) The Agency has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this contract;
  - (2) The Agency fails to maintain reasonable progress toward completion of the Project; or
  - (3) An acceptable Revenue Program is not submitted at the time of 90 percent disbursement of Local Match loan funds.

ARTICLE 13. RECORDS.

- (A) Without limitation of the requirement to maintain Project accounts in accordance with generally accepted government accounting standards, the Agency agrees to:
- (1) Establish an official file for the Project, which shall adequately document all significant actions relative to the Project;
  - (2) Establish separate accounts which will adequately and accurately depict all amounts received and expended on the Project, including all Local Match loan funds received under this contract;
  - (3) Establish separate accounts which will adequately depict all income received which is attributable to the Project, specifically including any income attributable to Local Match loan funds disbursed under this contract;
  - (4) Establish an accounting system, which will accurately depict final total costs of the Project, including both direct and indirect costs;
  - (5) Establish a Local State Match account prior to issuance of the Local Match loan contract from which the state match portion of the project is being paid. The Agency must deposit sufficient funds in the account as necessary to make payments to the contractor.
  - (6) Establish such accounts and maintain such records as may be necessary for the state to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations; and
  - (7) If Force Account is used by the Agency for any phase of the Project, other than for planning, design and construction engineering, and administration provided for by allowance, accounts will be established which reasonably document all employee hours charged to the Project and the associated tasks performed by each employee. Indirect force account costs may be paid with prior written approval by the Division of the Agency's indirect cost proposal.
- (B) The Agency agrees to require Project contractors and subcontractors to maintain books, records, and other material relative to the Project in accordance with generally accepted accounting standards, and to require such contractors and subcontractors to retain such books, records, and other material for a minimum of three years after Project completion. The Agency further agrees to require that such books, records, and other material shall be subject at all reasonable times to inspection, copying, and audit by the SWRCB and by the U.S. Environmental Protection Agency, or any authorized representatives thereof.
- (C) The Agency agrees to retain its Project records for a minimum of three years after Project completion, and for such longer period as may be required for the state to fulfill federal reporting requirements under federal tax statutes and regulations. All Agency records relative to the Project shall be subject at all reasonable times to inspection, copying and audit by the SWRCB and the U.S. Environmental Protection Agency, or any authorized representatives thereof.



- (D) The Agency agrees to furnish the SWRCB with copies of cancelled checks paid to its contractor(s), at least each quarter documenting payment of the state match amount.

ARTICLE 14. FINAL PROJECT REPORTS; AUDIT

- (A) Within 90 days after Project completion, the Agency agrees to submit to the Division a final Project summary report which briefly describes the Project as completed, its features, estimated capacity, and apparent treatment capability. The report shall note any unusual operational problems that have been encountered and shall indicate whether the Agency expects to be able to certify that the Project meets applicable design specifications and effluent limitations one year after Project completion.
- (B) Within 120 days after Project completion, the Agency agrees to provide to the Division a final cost summary report on the Project. The summary shall include at a minimum, a statement of:
- (1) Total Project costs;
  - (2) Total Project costs which are eligible for Local Match loan funding under the SWRCB's Local Match loan program and this contract;
  - (3) The total amount of Local Match loan funds received;
  - (4) The amount of interest earned, if any, on Local Match loan funds before disbursement on account of incurred Project costs. If no interest has been earned, this fact shall be expressly stated.
- (C) The report shall be accompanied by such other financial information as may be reasonably required by the Division to verify Agency entitlement to Local Match loan funds, to assure program integrity of the State Revolving Fund Local Match loan Program, and to comply with any federal requirements. A duly authorized representative of the Agency shall certify the report as correct.
- (D) The Division, at its option, may call for an audit of financial information relative to the Project, where the Division determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal requirements. Where such an audit is called for, the audit shall be performed by a Certified Public Accountant independent of the Agency and at the cost of the Agency. The audit shall be in the form required by the Division.

ARTICLE 15. REPAYMENT; PENALTIES; AGENCY OBLIGATION.

- (A) The Local Match loan amount shall be repaid in full not later than 20 years after the completion of construction. Repayment shall be made in 20 annual installments, with the first repayment due one year after the completion of construction, with annual repayment installments due thereafter until the Local Match loan amount has been paid in full.
- (B) The repayment amount is based on a standard fully amortized Local Match loan with equal annual repayments. The remaining balance is the previous balance, plus the disbursements, less the repayment. Repayment calculations will be made beginning one year after completion of construction and continuing each year thereafter for 20 years. Exhibit F is a preliminary repayment schedule

based on the provisions of this article and an estimated disbursement schedule. The actual repayments will be based on actual disbursements.

The Agency shall have the right at any time or from time to time to prepay all or any part of the amounts due under this contract without penalty.

- (C) Upon completion of construction of the Project and submission of necessary reports, the Division will prepare an appropriate Local Match loan Repayment Schedule and supply the same to the Agency. The Local Match loan Repayment Schedule may be amended as necessary to accurately reflect amounts due under this contract. Any amended Local Match loan Repayment Schedule that is necessary will be prepared by the Division and furnished to the Agency.
- (D) The Agency agrees to make each Local Match loan repayment on or before the due date therefor, a ten-(10) day grace period will be allowed. A penalty in the amount of one-tenth of one percent (0.1 %) per day of the amount due will be assessed for late repayment. If the repayment is not received by the end of the grace period, the penalty will be assessed from the repayment due date. For purposes of penalty assessment, repayment will be deemed to have been made if repayment is deposited in the U.S. Mail within the grace period with postage prepaid and properly addressed. Any penalties assessed will not be added to the Local Match loan balance, but will be treated as a separate account and obligation of the Agency.
- (E) The Agency is obligated to make all payments required by this contract to the SWRCB solely from Net System Revenues, notwithstanding any individual default by its constituents or others in the payment to the Agency of rates and charges fixed and prescribed by the Agency for collection of New System Revenues for repayment of this contract. Subject to the foregoing limitation on source of payment, the Agency shall provide for the punctual payment to the SWRCB of all amounts which become due under this contract and which are received from constituents or others in payment to the Agency from Net System Revenues. In the event of failure, neglect or refusal of any officer of the Agency to fix, prescribe and collect, or cause to be fixed, prescribed and collected any rates and charges necessary to ensure that the Net System Revenues are sufficient to pay the amount due under this contract, including any additional amount required under Section 11 of this contract or to pay over to the SWRCB and such Net System Revenues necessary to satisfy any amount due under this contract, the SWRCB may take such action in a court of competent jurisdiction as it deems necessary to compel the performance of all duties relating to the fixing, prescribing and collecting of such rates and charges and the payment of such Net System Revenues to the SWRCB. Action taken pursuant hereto shall not deprive the SWRCB of, or limit the application of, any other remedy provided by law or by this contract.

#### ARTICLE 16. TERMINATION; IMMEDIATE REPAYMENT.

- (A) This contract may be terminated by written notice during construction of the Project, or thereafter at any time prior to complete repayment by the Agency, at the option of the SWRCB, upon violation by the Agency of any material provision of this Local Match loan contract after such violation has been called to the attention of the Agency and after failure of the Agency to bring itself into compliance with the provisions of this contract within a reasonable time as established by the Division.

- (B) In the event of such termination, the Agency agrees, upon demand, to immediately repay to the SWRCB an amount equal to the current balance due on the Local Match loan, and all penalty assessments due.

ARTICLE 17. DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS.

- (A) In the event that any breach of any of the provisions of this contract by the Agency shall result in the loss of tax exempt status for any state bonds, or if such breach shall result in an obligation on the part of the state to reimburse the federal government by reason of any arbitrage profits, the Agency shall immediately reimburse the state in an amount equal to any damages paid by or loss incurred by the state due to such breach.

ARTICLE 18. DISPUTES.

- (A) Any dispute arising under this contract which is not otherwise disposed of by agreement shall be decided by the Division Chief, or his authorized representative. The decision shall be reduced to writing and a copy thereof furnished to the Agency and to the SWRCB's Executive Director. The decision of the Division shall be final and conclusive unless, within thirty (30) calendar days after mailing of the Division decision to the Agency, the Agency mails or otherwise furnishes a written appeal of the decision to the SWRCB's Executive Director. The decision of the SWRCB's Executive Director shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal under this clause, the Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Agency shall continue to fulfill and comply with all the terms, provisions, commitments, and requirements of this Local Match loan contract.
- (B) This clause does not preclude consideration of legal questions, provided that nothing herein shall be construed to make final the decision of the SWRCB, or any official or representative thereof, or any question of law.

ARTICLE 19. SWRCB ACTION; COSTS AND ATTORNEY FEES.

- (A) The Agency agrees that any remedy provided in this contract is in addition to and not in derogation of any other legal or equitable remedy available to the SWRCB as a result of breach of this contract by the Agency, whether such breach occurs before or after completion of the Project, and exercise of any remedy provided by this contract by the SWRCB shall not preclude the SWRCB from pursuing any legal remedy or right which would otherwise be available. In the event of litigation between the parties hereto arising from this contract, it is agreed that the prevailing party shall be entitled to such reasonable costs and/or attorney fees as may be ordered by the court entertaining such litigation.

ARTICLE 20. WAIVER.

- (A) The parties hereto may, from time to time, waive any rights under this contract unless such waiver is contrary to law, provided that any such waiver must be in writing and must be signed by the party making such waiver.

**ARTICLE 21. DRUG-FREE WORKPLACE CERTIFICATION.**

By signing this contract, the Agency hereby certifies under penalty of perjury under State laws, that the Agency will comply with the requirements of the Drug-Free Workplace Act of 1990, and will provide a drug-free workplace by taking the following actions:

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- (2) Establish a Drug-Free Awareness Program to inform employees about:
  - a. The dangers of drug abuse in the workplace;
  - b. The person's Agency's policy of maintaining a drug-free workplace;
  - c. Any available counseling, rehabilitation and employee assistance programs, and,
  - d. Penalties that may be imposed upon employees for drug abuse violations.
- (3) Provide, that every employee who works on the proposed Local Match loan contract will:
  - a. Receive a copy of the Agency's drug-free policy statement; and,
  - b. Agree to abide by the terms of the Agency's statement as a condition of employment on the Local Match loan contract.

(B) Failure to comply with these requirements may result in suspension of payments under the Local Match loan contract or termination of the Local Match loan contract or both, and the Agency may be ineligible for award of any future contracts if the Division determines that any of the following has occurred:

- (1) The Agency has made false certification; or
- (2) Violated the certification by failing to carry out the requirements as noted above.

**ARTICLE 22. PREVAILING WAGES.**

- (A) The Agency agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. The Agency shall monitor all contracts subject to reimbursement from this Local Match loan contract to assure that the prevailing wage provisions of State Labor Code Section 1771 are being met.

**ARTICLE 23. NONDISCRIMINATION CLAUSE.**

- (A) During the performance of this agreement, the Agency shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, color, ancestry, religious creed, national origin, physical disability, (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The Agency shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Agency shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section

7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as if set forth in full. The Agency shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- (B) The Agency shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.
- (C) By signing this agreement, the Agency hereby certifies, unless specifically exempted, compliance with Government Code Section 12990(a-f) and California Code of Regulations, Title 2, Division 4, Chapter 5 in matters relating to reporting requirements and the development, implementation and maintenance of a Nondiscrimination Program. The Agency agrees not to unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave.
- (D) By executing this agreement, the signer of this agreement on behalf of Agency swears under penalty of perjury under the laws of the State of California that he/she is duly authorized to legally bind the Agency to the above-described certification.

ARTICLE 24. AMENDMENT.

- (A) This contract may be amended at any time by mutual written agreement of the parties.